

House Amendment 8324

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1 1 Amend House File 2716 as follows:
1 2 #1. By striking everything after the enacting
1 3 clause and inserting the following:
1 4 <Section 1. NEW SECTION. 147.140 EVIDENCE OF
1 5 REGRET OR APOLOGY.
1 6 In any civil action for personal injury or wrongful
1 7 death or in any arbitration proceeding relating to
1 8 such a civil action against any physician or surgeon
1 9 licensed pursuant to chapter 148, osteopathic
1 10 physician or surgeon licensed pursuant to chapter
1 11 150A, or dentist licensed pursuant to chapter 153,
1 12 based upon the alleged negligence of the licensee in
1 13 the practice of that profession or occupation, any
1 14 statement, affirmation, gesture, or conduct expressing
1 15 apology, sympathy, commiseration, condolence,
1 16 compassion, or a general sense of benevolence that was
1 17 made by a physician and surgeon, osteopathic physician
1 18 and surgeon, or dentist to the patient, relative of
1 19 the patient, or decision maker for the patient that
1 20 relates to the discomfort, pain, suffering, injury, or
1 21 death of the patient as a result of an unanticipated
1 22 outcome of medical care is inadmissible as evidence of
1 23 an admission of liability or as evidence of an
1 24 admission against interest.
1 25 Sec. 2. NEW SECTION. 147.141 NOTICE OF CLAIM AND
1 26 CERTIFICATE OF MERIT REQUIREMENT.
1 27 1. At least thirty days prior to filing a civil
1 28 action for personal injury or wrongful death against a
1 29 licensed health care provider, based upon the alleged
1 30 negligence of the licensed health care provider in the
1 31 practice of that profession, a plaintiff shall serve
1 32 by certified mail, return receipt requested, a notice
1 33 of claim upon the licensed health care provider. The
1 34 notice of claim shall include a statement of the
1 35 theory of liability upon which the cause of action is
1 36 based and include a list of all persons to whom
1 37 notices have been sent, together with a certificate of
1 38 merit, if necessary, as specified in subsection 2.
1 39 2. a. The certificate of merit shall be signed
1 40 under oath by an expert who meets the expert witness
1 41 standards in section 147.139.
1 42 b. The certificate of merit shall contain
1 43 information relating to all of the following:
1 44 (1) The expert's familiarity with the applicable
1 45 standard of care.
1 46 (2) The expert's qualifications.
1 47 (3) The expert's statement that the appropriate
1 48 standard of care was breached by the health care
1 49 provider named in the complaint.
1 50 (4) The expert's statement of the actions that the
2 1 health care provider should have taken or failed to
2 2 take to have complied with the standard of care.
2 3 (5) A statement of the manner in which the breach
2 4 of the standard of care was the cause of the injury
2 5 alleged in the complaint.
2 6 c. A separate certificate of merit shall be
2 7 completed for each defendant named in the notice of
2 8 claim.
2 9 d. If a plaintiff or plaintiff's counsel asserts
2 10 in good faith that the plaintiff has insufficient time
2 11 to obtain a certificate of merit prior to the
2 12 expiration of the period of limitation in subsection
2 13 1, the plaintiff shall provide notice of intent to
2 14 provide a certificate of merit to the defendant within
2 15 sixty days of the date the defendant receives the
2 16 notice of the claim.
2 17 3. Notwithstanding subsection 2, if a plaintiff
2 18 believes that a certificate of merit is not necessary
2 19 because the plaintiff's cause of action against a
2 20 health care provider is based upon a well-established
2 21 legal theory of liability which does not require
2 22 expert testimony supporting a breach of the applicable
2 23 standard of care, the plaintiff shall file a
2 24 declaration setting forth the basis for the alleged

2 25 liability of the health care provider in lieu of the
2 26 certificate of merit.
2 27 4. Except as otherwise provided in this section,
2 28 the applicable statute of limitations in a civil cause
2 29 of action against a health care provider upon whom a
2 30 notice of claim is served pursuant to this section
2 31 shall be tolled from the date the notice of claim is
2 32 mailed.
2 33 5. If the plaintiff fails to provide a notice of
2 34 claim and a certificate of merit, or a declaration of
2 35 the legal theory upon which the claim is based
2 36 pursuant to subsection 3, the claim shall be dismissed
2 37 with prejudice. A failure to provide a notice of
2 38 claim and certificate of merit or a declaration of the
2 39 legal theory upon which the claim is based shall be
2 40 the only basis for dismissal under this subsection.
2 41 The insufficiency of such items shall not provide a
2 42 basis for objection, a bar to expansion of the claim,
2 43 or a limitation on the scope of discovery.
2 44 6. For purposes of this section, "health care
2 45 provider" means a physician or surgeon, osteopath,
2 46 osteopathic physician or surgeon, dentist, podiatric
2 47 physician, optometrist, pharmacist, chiropractor, or
2 48 nurse licensed in this state, a hospital licensed
2 49 pursuant to chapter 135B, or a health care facility
2 50 licensed pursuant to chapter 135C.>
3 1 #2. Title page, line 2, by striking the words
3 2 <evidentiary, reporting,> and inserting the following:
3 3 <evidentiary>.
3 4 #3. By renumbering as necessary.
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3 8 _____
3 8 UPMEYER of Hancock
3 9 HF 2716.501 81
3 10 rh/je/1367